

Foreign-Trade Zones Board, Commerce

§ 400.36

available for public inspection and the FEDERAL REGISTER notice shall invite further public comment for a period of not less than 30 days, with an additional 15-day period for rebuttal comments.

(C) If the bases for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of §§ 400.34(a)(5)(iv)(A) and (B) shall be followed.

(b) *Methodology and evidence.* The evaluation of an application for production authority shall include the following steps:

(1) The first phase (§ 400.27(a)) involves consideration of threshold factors. If an examiner or reviewer makes a negative finding on any of the factors in § 400.27(a) in the course of a review, the applicant shall be informed pursuant to § 400.34(a)(5)(iv)(A). When threshold factors are the basis for a negative recommendation in a review of ongoing activity, the zone grantee and directly affected party shall be notified and given an opportunity to submit evidence pursuant to § 400.34(a)(5)(iv)(A). If the Board determines in the negative regarding any of the factors in § 400.27(a), it shall deny or restrict authority for the proposed or ongoing activity.

(2) The second phase (§ 400.27(b)) involves consideration of the enumerated economic factors, taking into account their relative weight and significance under the circumstances. Previous evaluations in similar cases shall be considered.

§ 400.35 Examiner's review—application for subzone designation.

The examiner shall develop a memorandum with a recommendation on whether to approve the application, taking into account the criteria enumerated in § 400.26. To develop that memorandum, the examiner shall review the case records including public comments, and may request information and evidence from parties of record, as necessary. The examiner's memorandum shall generally be submitted to the Board within 30 days of the close of the period for public comment. However, additional time may be taken as necessary for analysis of any public comment in opposition to the

application or if other complicating factors arise.

(a) If the examiner's recommendation is unfavorable to the applicant, it shall be considered preliminary and the applicant shall be notified in writing (via electronic means, where appropriate) of the preliminary recommendation and the factors considered in its development. The applicant shall be given 30 days from the date of notification, subject to extensions upon request by the applicant, which shall not be unreasonably withheld, in which to respond to the recommendation and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

(b) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary shall publish notice in the FEDERAL REGISTER after completion of the review of the response. The new material shall be made available for public inspection and the FEDERAL REGISTER notice shall invite further public comment for a period of not less than 30 days, with an additional 15-day period for rebuttal comments.

(c) If the bases for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of §§ 400.35(a) and (b) shall be followed.

(d) The CBP adviser shall be requested, when necessary, to provide further comments, which shall be submitted within 45 days after the request.

§ 400.36 Completion of case review.

(a) The Executive Secretary shall circulate the examiner's report (memorandum in the case of subzone applications) with recommendations to CBP headquarters staff and to the Treasury Board member for review and action.

(b) In its advisory role to the Board, CBP headquarters staff shall provide any comments within 15 days.

(c) The vote of the Treasury Board member shall be returned to the Executive Secretary within 30 days, unless a formal meeting is requested (see, § 400.3(b)).

(d) The Commerce Department shall complete the decision process within 15 days of receiving the vote of the Treasury Board member, and the Executive Secretary shall publish the Board decision.

(e) If the Board is unable to reach a unanimous decision, the grantee shall be notified and provided an opportunity to meet with the Board members or their delegates.

(f) *Delegation of authority to approve subzone designation.* The Board delegates to the Executive Secretary authority to approve applications requesting subzone designation, on the condition that such approved subzones will be subject to the activation limit for the zone in question.

(g) The Board or the Commerce Department's Assistant Secretary for Enforcement and Compliance may opt to terminate review of an application with no further action if the applicant has failed to provide in a timely manner information needed for evaluation of the application. A request from an applicant for an extension of time to provide information needed for evaluation of an application shall not be unreasonably withheld. The Executive Secretary may terminate review of an application where the overall circumstances presented in the application no longer exist as a result of a material change, and shall notify the applicant in writing of the intent to terminate review and allow 30 days for a response prior to completion of any termination action. The Executive Secretary shall confirm the termination in writing (by electronic means, where appropriate) to the applicant.

§ 400.37 Procedure for notification of proposed production activity.

(a) *Submission of notification.* A notification for production authority pursuant to §§ 400.14(a) and 400.22 shall be submitted simultaneously to the Board's Executive Secretary and to CBP (as well as to the grantee of the zone, if the grantee is not the party making the submission).

(b) *Initial processing of notification.* Upon receipt of a complete notification conforming to the requirements of the notification format established by the Executive Secretary pursuant to

§ 400.22, the Executive Secretary shall commence processing the notification. Unless the Executive Secretary determines, based on the content of the notification, to recommend further review to the Board without inviting public comment on the notification, the Executive Secretary shall transmit to the FEDERAL REGISTER a notice inviting public comment on the notification (with such comment subject to the standards of § 400.28(b)). The notice shall be transmitted to the FEDERAL REGISTER within 15 days of the commencement of the processing of the notification, and the comment period shall normally close 40 days after the date the notice appears. If the notification indicates that a material or component to be used in the activity is subject to an AD/CVD order or proceeding, or suspension of liquidation under AD/CVD procedures, the notice shall include that information. Evidence, factual information and written arguments submitted in response to the notice must be submitted by the deadline for comments. Any comments by CBP pertaining to the notification shall be submitted to the Executive Secretary by the end of the comment period. Within 80 days of receipt of the notification, the Executive Secretary shall submit to the Board a recommendation on whether further review of all or part of the activity subject to the notification is warranted. The Executive Secretary's recommendation shall consider comments submitted during the comment period, any guidance from specialists within government, and other relevant factors based on the Board staff's assessment of the notification, in the context of the factors set forth in § 400.27.

(c) *Determinations regarding further review.* Within 30 days of receipt of the Executive Secretary's recommendation, the Board members shall provide to the Executive Secretary their determinations on whether further review is warranted concerning all or part of the activity that is the subject of the notification. If either Board member makes a determination that further review is warranted, the activity that is subject